

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS

3 ROYAL SLEEP PRODUCTS, INC.
4 a Florida Corporation,

Case No: 1:07 CV 6588

5 Plaintiff,

6 v.

ORIGINAL

7 RESTONIC CORPORATION,
8 an Illinois Corporation,
9 RESTONIC MATTRESS CORPORATION,
10 an Illinois Corporation,
11 SLEEP ALLIANCE, LLC,
12 a Delaware Limited Liability Company,
13 ROYAL BEDDING COMPANY OF BUFFALO,
14 a New York Corporation,
15 JACKSON MATTRESS CO., LLC,
16 a North Carolina Limited Liability Company,
17 CONTINENTAL SILVERLINE PRODUCTS L.P.,
18 a Texas Limited Partnership,
19 STEVENS MATTRESS MANUFACTURING CO.,
20 a North Dakota Corporation,
21 TOM COMER, JR., an individual,
22 DREW ROBINS, an individual, and
23 RICHARD STEVENS, an individual,

24 Defendants.

25 -----
TELEPHONIC DEPOSITION OF RICHARD STEVENS

June 3, 2008

Appearances:

For the Plaintiff (Telephonically):

ZARCO EINHORN SALKOWSKI & BRITO, P.A.
Bank of America Tower
100 Southeast 2nd Street, Suite 2700
Miami, Florida 33131

By: MELISSA L. BERNHEIM, ATTORNEY AT LAW
AND

ROBERT F. SALKOWSKI, ATTORNEY AT LAW



1 A p p e a r a n c e s : (Cont'd)

2

3 For the Defendants Restonic Corporation and
4 Restonic Mattress Corporation
(Telephonically):

5 BURKE, WARREN, MacKAY & SERRITELLA, PC
6 330 North Wabash Avenue, 22nd Floor
Chicago, Illinois 60611
By: FREDERIC A. MENDELSON, ATTORNEY AT LAW

7

8 For the Defendants Continental Silverline
9 Products, L.P., Jackson Mattress Co., LLC,
Royal Bedding Company of Buffalo, Sleep
10 Alliance, LLC, Drew Robins and Tom Comer,
Jr. (Telephonically):

11 SMITH & AMUNDSEN, L.L.C.
12 150 North Michigan Avenue, Suite 3300
Chicago, Illinois 60601
By: THOMAS J. LYMAN, III, ATTORNEY AT LAW

13

14 For the Defendants Stevens Mattress
15 Manufacturing Co. and Richard Stevens:

16 PEARSON CHRISTENSEN & CLAPP, PLLP
P.O. Box 352
17 Grafton, North Dakota 58237-0352
By: DANIEL L. GAUSTAD, ATTORNEY AT LAW

18

19 For the Defendants Continental Silverline
Products L.P. and Drew Robins (Telephonically):

20 FULBRIGHT & JAWORSKI, LLP
1301 McKinney
21 Suite 5100
Houston, Texas 77010-3095
22 By: ANDREW S. FRIEDBERG, ATTORNEY AT LAW

23

24 Also Present: Christian Miller

25 Taken By: Ruth Ann Johnson, RPR

I N D E X

DEPONENT: PAGE NO.

RICHARD STEVENS

Examination by . . . Ms. Bernheim 5
Examination by . . . Mr. Gaustad 87

EXHIBITS

No. A -- Copy of Articles of
Incorporation

No. B -- Copy of Amended and Restated
Sublicense Agreement

No. C -- Copy of Restonic Mattress Corporation

No. D -- Copy of VISA statement

No. E -- Copy of Letter of Intent

No. F -- Copy of SFG invoices

No. G -- Copy of A. Lava & Son Co.

No. H -- Copy B & C International

No. I -- Copy of Restonic Upper Midwest Sleep,
LLC invoices

No. J -- Copy of Restonic Executive Bulletin

1 Q. Okay. So let's back up. Stevens
2 Mattress Manufacturing Company, does Stevens
3 Mattress Manufacturing Company manufacture and
4 sell bedding products?

5 A. Yes, it does.

6 Q. Okay. And does Stevens Mattress --
7 and Stevens Mattress Manufacturing Company has
8 a sublicense agreement with Restonic, correct?

9 A. That's correct.

10 Q. Does Stevens Mattress Manufacturing
11 Company have licenses with any other mattress
12 company or have sublicenses with any other
13 mattress company?

14 A. No.

15 Q. Okay. Now Upper Midwest Sleep, LLC,
16 does that company also sell and manufacture
17 bedding products?

18 A. No. No. It -- I really don't
19 understand the question, because it's confusing
20 there to me.

21 Q. What does Upper Midwest Sleep, LLC
22 do, does it have a business function?

23 A. The business function of -- it has
24 no -- if I'm not mistaken, you know, I'm not
25 totally clear on that yet, just let me think it

1 through here a minute.

2 I think the only one that
3 manufactures mattresses and box springs is
4 Stevens Mattress Manufacturing.

5 Q. Okay.

6 A. That has a license under that --
7 with Restonic.

8 Q. So if Upper Midwest Sleep, LLC
9 doesn't manufacture bedding products, what does
10 it do?

11 A. It was a holding company of some --
12 I would have to go and review that, what, what
13 the real function of that was. Is.

14 Q. Who are the officers and directors?
15 I'm sorry, who are the managers and members of
16 Upper Midwest Sleep, LLC?

17 A. Richard Stevens.

18 Q. That's you?

19 A. Right.

20 John Stevens.

21 Q. Uh-huh.

22 A. And Brian Stevens.

23 Q. Okay. Now who's Don Stevens?

24 A. Brian Stevens, I said.

25 Q. All right. Wasn't there one in the

1 and representing Sleep Alliance, aside from
2 that meeting, did you ever attend any meetings,
3 any other meetings in Illinois on behalf of
4 Sleep Alliance?

5 A. There might have been some, but I, I
6 can't remember.

7 Q. Any idea, any reason as to why Sleep
8 Alliance would conduct its meetings in
9 Illinois?

10 A. Ease of getting to. It's one of the
11 only places that we can fly direct from this
12 part of the country.

13 Q. Are you aware of a, a meeting this
14 coming June 5, two days from now, that Sleep
15 Alliance is conducting in Illinois?

16 A. No.

17 Q. Are you aware of, of any meeting
18 that Restonic is conducting June 5 in Illinois?

19 A. Not June 5, no.

20 Q. Okay. How about any time this
21 month, are there any upcoming meetings?

22 A. June 4.

23 Q. June 4.

24 Now the meeting on June 4, is that
25 Restonic or is that Sleep Alliance calling that

1 meeting?

2 A. I do not know if it's a Sleep
3 Alliance meeting, but there is a Restonic
4 meeting.

5 Q. Are you attending that meeting?

6 A. Yes, I am.

7 Q. How often do you attend meetings for
8 Restonic in Illinois?

9 A. Oh, I would say probably maybe once
10 a year, sometimes more, sometimes less. It, it
11 just depends.

12 Q. But at least once a year?

13 A. No, I did not say that, at least
14 once a year. I said sometimes once a year,
15 sometimes less, you know.

16 I don't think, I don't think in 2006
17 I went to any meetings for Restonic in, in
18 Illinois.

19 Q. Was that for any specific reason or
20 is it because they just didn't have one?

21 A. They didn't have one.

22 Q. Is that common not to have one?

23 MR. GAUSTAD: I'm going to object.

24 You're asking him to speculate as to why

25 Restonic may or may not call a meeting, so I'll

1 object to the form of the question.

2 Q. (By Ms. Bernheim) Let me rephrase.

3 Does Restonic, aside from 2006, in
4 your experience, as a Restonic sublicensee,
5 does Restonic usually have a meeting yearly in
6 Illinois, in Chicago, in Illinois, wherever it
7 may be?

8 A. Not, not all the time in Illinois,
9 no.

10 Q. They have them other places?

11 A. There could be other places.

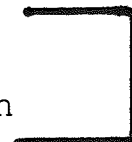
12 Q. Where, what other place, for
13 example, where else have they held meetings?

14 A. I'm trying to think here. I think
15 in Indianapolis a few years back. Sometimes
16 they use them in conjunction with trade
17 shows, --

18 Q. Okay.

19 A. -- you know, for -- so that --
20 because everybody has to be at the trade shows,
21 so sometimes, then, they'll have a meeting in
22 conjunction with the trade show. And the trade
23 shows usually are never in Chicago or Illinois.

24 Q. Okay. To the best of your
25 recollection, when did -- and when I say you in



1 this question, I'm either referring to you
2 personally as Richard Stevens, or you as either
3 Stevens Mattress Man -- well, as you testified,
4 Stevens Mattress Manufacturing Company, so when
5 did you personally, or through Stevens Mattress
6 Manufacturing Company, first become associated
7 with Restonic?

8 A. I believe it was 19, the end of 18
9 -- the end of 1989 or the year 1990.

10 Q. And you became a sublicensee during
11 that period of time?

12 A. Correct.

13 Q. Okay.

14 MR. GAUSTAD: And I want to make --
15 Miss Bernheim I want to make sure I understand
16 the definition. You've defined you to be both
17 Richard individually and Richard as a --

18 MS. BERNHEIM: I just was about to
19 get into that, to clarify that.

20 MR. GAUSTAD: Okay. Because there's
21 a compound question in there, I believe.

22 MS. BERNHEIM: Okay. Well, let's,
23 let's, let's just establish the foundation
24 here.

25 Q. (By Ms. Bernheim) Who, Mr. Stevens,

1 who became the sublicensee, did you sign it
2 personally or was it Stevens Mattress?

3 A. Stevens Mattress.

4 Q. Okay. And Stevens Mattress became a
5 sublicensee sometime in the end of 1989 or
6 early 1990?

7 A. I believe that's the date, yeah.

8 Q. Okay. Now did, was there any
9 negotiation at all in reaching, in coming to
10 terms on a sublicense agreement?

11 A. Explain what you mean by
12 negotiations.

13 Q. Did you, how did it work, did
14 Restonic hand you a sublicense agreement and
15 you signed it, or did you take terms, negotiate
16 terms, or how did it work?

17 A. They had a standard sublicense
18 agreement that we signed and that's what we
19 followed.

20 Q. Okay. Now when you signed that
21 agreement, where were you located, did you sign
22 it in Illinois?

23 A. No. I believe it was in Grand
24 Forks, North Dakota.

25 Q. And how, how did those signatures --

1 MR. GAUSTAD: And I want to make
2 sure I understand, when you use the word you,
3 who are you referring to?

4 MS. BERNHEIM: I'm sorry.

5 Q. (By Ms. Bernheim) Stevens Mattress
6 Manufacturing.

7 MR. GAUSTAD: Thank you.

8 A. I believe it is, yeah.

9 Okay.

10 Q. (By Ms. Bernheim) Mr. Stevens,
11 recognizing that this is the most recent
12 sublicense agreement that Stevens Mattress
13 signed with Restonic Mattress Corporation --
14 and this document, for the record, is dated
15 June 1, 2007, correct?

16 A. Yes.

17 Q. Okay. So then you would agree that
18 you've had an ongoing relationship with
19 Restonic Mat -- you being Stevens Mattress
20 Manufacturing Company, have had an ongoing
21 business relationship with Restonic Mattress
22 Corporation for at least about, or
23 approximately 17 years, correct?

24 A. Yes.

25 Q. And you understand that, that

1 You, I'm sorry, from my views here,
2 I'm talking about Stevens Mattress
3 Manufacturing Company. Does Stevens pay any
4 money to Restonic?

5 A. For?

6 Q. To just be a member of the program.

7 A. No.

8 Q. Okay. Do you pay royalties under
9 that program?

10 A. We pay royalties under our
11 sublicense agreement, but not under a national
12 account agreement.

13 Q. Under the national account agreement
14 does Restonic pay any commissions to you?

15 A. No.

16 Q. Do you, does Stevens Mattress
17 Manufacturing purchase any items from Restonic?

18 A. Some point of purchase, things that
19 they -- goes through their office.

20 What I mean by point of purchase
21 would be things like, you know, mattress sale
22 going on today or, you know, window type
23 banner, you know, miscellaneous things like
24 that.

25 Q. Okay. I'm going to ask your

1 A. No, we do not.

2 Q. Have you ever sold in the state of
3 Illinois?

4 A. Not to the best of my knowledge.

5 Q. Okay. Now pursuant to the
6 sublicense agreement, which we've already
7 identified, you pay royalties, correct?

8 A. Yes.

9 Q. Okay. And, and where, how do you
10 pay those royalty payments?

11 A. By check.

12 Q. Okay. And where do you send the
13 checks?

14 A. To Restonic corporate office.

15 Q. And that's located in Illinois?

16 A. That's correct.

17 Q. And how often do you pay royalties?

18 A. I believe it's once a month.

19 Q. I'm sorry, was that once a month?

20 A. I believe that's right.

21 Q. So once a month you send a check to
22 Restonic in Illinois?

23 A. Correct.

24 Q. And when you joined, when Stevens
25 Mattress first became a licensee in 1990, or

1 early 1990, were you paying royalties?

2 A. Yes.

3 Q. And how did you pay the royalties
4 back then?

5 A. I believe it was to Restonic.

6 Q. By check?

7 A. By check, yes.

8 Q. That you mailed to Illinois?

9 A. Right.

10 Q. So for at least the last 17 years
11 you've been sending checks to Restonic in
12 Illinois on a monthly basis. Is that correct?

13 A. Yes.

14 Q. Now you stated a minute ago that you
15 can sell anywhere in the country, Stevens
16 Mattress Manufacturing can sell products
17 anywhere in the country including the state of
18 Illinois, correct?

19 A. Um-hum.

20 Q. Now do you have, does Stevens
21 Mattress have any contracts with any Illinois
22 residents for the sale of mattresses?

23 A. No.

24 Q. Do you have any contracts -- I'm
25 sorry, for the purpose of this depo I'm talking

1 A. I can't recall the dates of it.

2 Q. Can you recall, a ballpark, how many
3 times you may have attended a meeting, not the
4 dates, just how many times?

5 A. I real -- I really can't recall
6 that.

7 Q. Have you ever, has Stevens Mattress
8 Manufacturing ever sent any of its employees to
9 a Restonic meeting in Illinois?

10 A. Yes.

11 Q. How often?

12 A. There's a gentleman that works for
13 me that is on the marketing committee, which
14 goes -- I don't, I don't know how many times he
15 goes there, but, you know, it's probably, you
16 know, you know, maybe once or twice a year.
17 I'm not totally positive there how many times
18 he goes.

19 Q. What is that gentleman's name?

20 A. Ken Akers.

21 Q. A-k-e-r-s?

22 A. Right.

23 Q. And, and where does Mr. Akers
24 reside?

25 A. In Ankeny, Iowa.

1 Q. And what is his job title?

2 A. Sales manager.

3 Q. Sales manager.

4 Do you have any sales managers
5 located in the state of Illinois?

6 A. No.

7 Q. Mr. Stevens, have you personally
8 ever attended a product development meeting for
9 Restonic in Illinois?

10 A. Explain what you mean by product
11 development committee or meeting?

12 Q. A meeting, a meeting where there's a
13 discussion with members of Restonic about
14 different products that the company's going to
15 offer.

16 A. I've been to meetings with, with
17 flammability issues, but I don't recall of
18 specific products.

19 Q. And when you went to the
20 flammability issue meeting, were you
21 representing Stevens Mattress?

22 A. Yes.

23 Q. Do you recall when you attended the
24 flammability issues meeting?

25 A. There was some in 2006 and last year

1 in, last year in, probably, it was either, oh,
2 May, probably sometime in May.

3 Q. Of '07?

4 A. Of '07, yes.

5 Q. And you said there was some in 2006.
6 What, were there more than one?

7 A. I, I think there was only one.

8 Q. Okay. And do you recall what month
9 in '06 or --

10 A. I think it was in, in the autumn
11 sometime.

12 Q. Okay. Have you ever attended on
13 behalf, as a representative of Stevens
14 Mattress, a design committee meeting in
15 Illinois for Restonic?

16 A. I don't understand what you mean by
17 design.

18 Q. A meeting where the discussion was
19 along the lines of the design of a product or,
20 or the direction the -- Restonic was going to
21 take, any kind of corporate decisions along
22 those lines?

23 A. I would have attended meetings with
24 the development of a product, but not, not, you
25 know, of, of determining like the different

1 flammability issue or is that --

2 MR. GAUSTAD: And I'm going to
3 object to the form of the question, because
4 this line of questioning, I believe, dealt with
5 these meetings that occurred in Illinois. Is
6 that the -- and so I'm going to object to the
7 form of the question as to whether now you're
8 expanding this to include meeting --

9 MS. BERNHEIM: We're not, we're not
10 expanding it. I'm just -- you know, the client
11 has testified he didn't attend a product
12 development meeting, then he said he did. I'm
13 trying to find out what meetings he's attended
14 in Illinois.

15 MR. GAUSTAD: Okay.

16 Q. (By Ms. Bernheim) So --

17 A. The meetings, the meetings I
18 attended, attend, that I'm part of, are how to
19 develop the product so that it meets the
20 federal flammability issues.

21 And that could be -- you could, I
22 mean, that's what, that's what -- you can call
23 it a product, you can call it, you know,
24 several different names. I don't know what you
25 want to classify it as, but the meetings that I

1 would have attended would have been
2 specifically for the different flammability
3 issues.

4 And then I attended, you know, a
5 part of that, too, was attending the, the
6 actual, at the Underwriters Laboratory of
7 watching the mattresses being tested to see if
8 they passed the --

9 Q. Where, where was that laboratory?

10 A. It's in, in Chicago. It's UL
11 laboratories. Underwriters Laboratory.

12 Q. And when did you do that, when did
13 you attend that laboratory?

14 A. Probably last May.

15 Q. How many times did you go there?

16 A. It was for two days, two days, I
17 think it was.

18 Q. So you went one time for two days?

19 A. Right.

20 Q. So let me just get to the --

21 A. No, let me take that back. There
22 might have been other times earlier, earlier
23 on, but -- (no further response.)

24 Q. So let's just, let's just discuss a
25 little bit further. Did you, as a]

1 representative of Stevens Mattress
2 Manufacturing Company, ever attend a licensing
3 meeting? And by that I mean a meeting where
4 all the licensees get together in Illinois to
5 discuss the company or to take care of
6 corporate business affairs?

7 A. Have I ever attended one of those
8 meetings?

9 Q. Yes.

10 A. Yes, I have.

11 Q. Okay. Do you recall how many of
12 those meetings you attended?

13 A. No.

14 Q. More than five?

15 A. I just said I don't recall.

16 Q. Do you recall the last time you
17 attended one of those meetings?

18 A. No, I do not specifically.

19 Q. Have you ever attended any of the
20 Sleep Alliance meetings on behalf of -- well,
21 strike that.

22 Have you ever attended any of the
23 Sleep Alliance meetings on behalf of Upper
24 Midwest Sleep, LLC?

25 A. In the state of Illinois?

1 Q. Yes, in the state of Illinois.

2 A. I, I don't think so.

3 Q. Has Sleep Alliance ever held any
4 meetings in the state of Illinois?

5 MR. GAUSTAD: I'm going to object.
6 I think it's been asked and answered, but --

7 Q. (By Ms. Bernheim) You can still
8 answer.

9 MR. GAUSTAD: Yeah.

10 MS. BERNHEIM: And I apologize if
11 it's been asked.

12 MR. GAUSTAD: No, I understand.

13 A. I don't believe there has been.

14 Now remember, I'm not a member of
15 Sleep Alliance for the last six months, so --
16 (no further response.)

17 Q. (By Ms. Bernheim) All right. So
18 obviously I limit that question to up until the
19 time that you were no longer involved.

20 Okay. Did you ever receive, on
21 behalf of Stevens Mattress, any training in the
22 state of Illinois as an RMC licensee?

23 A. What do you mean by training?

24 Q. Training on products, training on
25 manufacturing, flammability training.

1 A. Yes, I'm sure.]

2 Q. You recall how often you received
3 that training?

4 A. No.

5 Q. Do you recall the last time you
6 would have gone to Illinois to receive
7 training?

8 A. I, I don't recall.

9 Q. Have you ever sent, has Stevens
10 Mattress ever sent any of its employees to
11 attend training with Restonic in Illinois?

12 A. I'm sure I have.

13 Q. I'm going to ask you, Mr. Stevens,
14 to please look at what plaintiffs have marked
15 as Exhibit D.

16 MS. BERNHEIM: I'm just going to
17 ask, it looks like -- do you all have Bates
18 document, Bates stamp number SMND 0362, did I
19 send that? Because I know I marked, I marked D
20 starting on SMND 0363, but I meant to do that
21 on two, so I'm wondering if you have it?

22 MR. GAUSTAD: It wasn't, it wasn't
23 e-mailed to us.

24 MS. BERNHEIM: So you start at 0363?

25 MR. GAUSTAD: Your Exhibit D that

1 was e-mailed to me, that I have, starts at SMND
2 0363.

3 MS. BERNHEIM: Can I ask you just to
4 look at the last page of Exhibit C and see what
5 that is? Is that, by chance, the VISA account
6 summary?

7 MR. GAUSTAD: The last Exhibit C
8 that, that you e-mailed to me is SMND 0146.

9 MS. BERNHEIM: Okay. Then that's my
10 mistake.

11 Q. (By Ms. Bernheim) Okay. So let's
12 just look at 0363.

13 Mr. Stevens, I am looking at, and
14 correct me if I'm wrong, a business card
15 statement for a Chase VISA, the date of the
16 account, of the invoice is 10 -- or the
17 statement is 10-29-07 to 11-28-07. Is that
18 correct?

19 A. Yeah.

20 Q. Okay. And I'm looking at the top,
21 is this for a Ken Lakes?

22 A. Akers.

23 Q. Akers, okay.

24 So that's the same Akers, Mr. Akers
25 we were talking about before?

1 A. Yes.

2 Q. Okay. So on 11 -- if you look down
3 towards the bottom, on November 17 there's a
4 charge, Doubletree Hotel O'Hare, Rosemont,
5 Illinois. Do you see that?

6 A. Um-hum.

7 Q. Now do you recall what that was for,
8 besides a hotel in Chicago? Is that Mr. Akers
9 going to Chicago?

10 A. Yes.

11 Q. Okay. And what would be the purpose
12 of that?

13 MR. GAUSTAD: If, if he knows. I
14 mean, I object --

15 A. I don't know what it, --

16 Q. (By Ms. Bernheim) If you know.

17 A. -- what specifically it would be
18 for, no.

19 Q. Can you give me a reason why Mr.
20 Akers would be traveling to Chicago?

21 MR. GAUSTAD: Well, I'm going to
22 object to the form of the question, because
23 you're asking him to speculate.

24 MS. BERNHEIM: Okay. Strike that.

25 Q. (By Ms. Bernheim) How often, to the

1 best of your knowledge, does Mr. Akers go to
2 Illinois?

3 A. I would have to look that up.

4 Q. To the best of your knowledge --

5 Okay. If you were going to look
6 that up, what, what would you consult to find
7 out that information?

8 A. Well, I would talk to him.

9 Q. Are you aware whether -- if Mr.
10 Akers was going to travel to Illinois, would he
11 tell you first, normally?

12 A. No.

13 Q. And are you aware of Mr. Akers
14 having traveled to Illinois in the past?

15 A. Yes.

16 Q. And do you recall what he traveled
17 to Illinois for?

18 A. He's, he would be on the, he's on
19 some of the marketing arms of the Restonic.

20 Q. Would he be going for, he has gone
21 for marketing meetings?

22 A. Uh-huh.

23 Q. If you would please turn to page
24 Bates stamp number SMND 0365, that's still a
25 part of Exhibit D.

1 A. Okay.

2 Q. And I'm looking at an e-mail dated
3 May 7, 2008 -- I'm sorry, yes, which has a
4 forwarded message attached to it dated
5 February 11, 2008. Do you see that?

6 A. Yes.

7 Q. And if we look over at the next
8 page, which is Bates stamp SMND 0366, indicates
9 a flight reservation for you, Mr. Stevens,
10 traveling to Chicago O'Hare on February 12,
11 2008. Do you see that?

12 A. Um-hum.

13 Q. Do you recall -- well, first of all,
14 did you, did you travel to Chicago on February
15 12, 2008?

16 A. Yes.

17 Q. Okay. And do you recall why you
18 went to Chicago on February 12, 2008?

19 A. The purpose of the meeting was to
20 meet with Stylution.

21 Q. Stylution.

22 And what is Stylution?

23 A. It's a, it's a mattress company that
24 imports and sells from China and we do some
25 work for them.

1 Q. Who's we?

2 A. My -- Stevens Mattress.

3 Q. And who attended that meeting?

4 A. Myself and Ken Akers and Ed Scott.

5 Q. Who is Ed Scott?

6 A. Stylution.

7 Q. He works for Stylution?

8 A. Right.

9 Q. Okay. What kind of work does
10 Stevens Mattress do for Stylution?

11 A. They would, they would sell people
12 contain -- you know, containers of mattresses
13 and they would ask us to make box springs for
14 them.

15 Q. Now is that something that, did you
16 work in, in conglomeration with Sleep Alliance
17 or is that just Stevens Mattress that did that?

18 A. That's Stevens Mattress.

19 Q. Now when you made the, when Stevens
20 Mattress produced the box springs, would those
21 be shipped to Illinois?

22 A. No.

23 Q. Where would they go?

24 A. I believe there was orders to, one
25 order to Kansas and maybe like three to four

1 orders in Minnesota.

2 Q. So you were contracting with an
3 Illinois company, Stylution, and then having it
4 shipped somewhere else. Is that correct?

5 MR. GAUSTAD: I'm going to object to
6 the foundation. I don't know that there's been
7 any foundation as to where Stylution exists.

8 Q. (By Ms. Bernheim) Okay. Can I, I'm
9 going to go a little bit out of turn, can I
10 have you please, Mr. Stevens, look at Exhibit
11 I, and that's Bates stamped SMND 0491 through
12 SMND 0494.

13 MR. GAUSTAD: You said 0491 through?

14 MS. BERNHEIM: 494.

15 Q. (By Ms. Bernheim) And correct me if
16 I'm wrong, Mr. Stevens, but I'm looking at what
17 appears to be an invoice from Upper Midwest
18 Sleep, LLC, to Stylution USA. Is that correct?

19 A. Yes.

20 Q. Now just for clarification purposes,
21 you testified just a few minutes ago that it
22 was Stevens Mattress that conducted business
23 with Stylution, yet, according to this invoice,
24 it appears it's Upper Midwest Sleep, LLC.

25 So can you clarify that for me,

1 please? Why would Upper Midwest Sleep, LLC's
2 name be on the invoice if it was Stevens
3 Mattress?

4 A. I would have to think that through.

5 Q. Is there anything that you have to
6 consult to help you refresh your recollection
7 on that?

8 A. Well, that's the name of, that's the
9 name of the company that, you know, Upper
10 Midwest Sleep is the name of the company that,
11 you know, Steven -- I really don't have an
12 explanation for it.

13 Q. Okay. Now underneath the section of
14 the invoice where it says Sold To, it says
15 Stylution USA, 1142 Rose Road, Lake Zurich,
16 Illinois, 60047. Is that correct?

17 A. Yeah.

18 Q. Now is it your understanding that
19 Stylution USA is located in Illinois?

20 A. Yes.

21 Q. Okay. Now when you testified just a
22 few minutes ago that you conducted business
23 with Stylution in that they brought mattresses
24 over and Stevens Mattress made box springs for
25 those mattresses. Is that correct?

1 A. Um-hum.

2 Q. So did you enter into a contract for
3 the manufacturing of the box springs, did
4 Stevens Mattress enter into a contract for the
5 manufacture of the box springs with Stylution
6 USA?

7 A. Not a contract, no..

8 Q. What, what kind of an agreement did
9 you have?

10 A. They asked if we would do the, do
11 the work and ship them to these places in
12 Minnesota and, around there, and we agreed to
13 do it.

14 Q. You had no written agreement --

15 A. No.

16 Q. -- with Stylution USA?

17 A. No.

18 Q. Are there any e-mails between you
19 and Stylution USA that discuss the terms of
20 this agreement?

21 A. Not that I'm aware of. There
22 probably is someplace. I'm not aware of any,
23 though.

24 Q. So, in other words, whatever
25 agreement you had would just be reflected by

1 the invoices you provided to us?

2 A. I'm sure we had, we had someplace
3 along the line of a, of a price and all that
4 there, you know, and -- but I don't recall
5 where any of it is.

6 Q. I'm going to ask you, please, now to
7 look at Exhibit E, which plaintiffs have marked
8 as Bates stamp number SMND 0061.

9 A. Okay.

10 Q. Mr. Stevens, do you have that?

11 A. Yes.

12 Q. Okay. And it looks to me that this
13 is a Letter of Intent dated April 28, 2008,
14 between, I apologize if I mispronounce, Evenson
15 or Evenson Peterson Consulting --

16 A. Okay.

17 Q. -- and Upper Midwest Sleep.

18 And according to this Letter of
19 Intent, the Description of Services is, is that
20 the consultant will provide client with
21 engineered labor standards that reflect the
22 actual time required to produce a mattress or
23 foundation unit.

24 Mr. Stevens, can you explain a
25 little bit about the purpose of this Letter of

1 Intent?

2 A. What, what the purpose of this is
3 that we're trying to upgrade our software
4 system and this lady is an industrial engineer,
5 which can help specifically get our time, or
6 cost of direct labor and indirect labor in the
7 products.

8 Q. And is it, is it Evenson or Evenson?

9 A. Evenson.

10 Q. And so, and Evenson Peterson
11 Consulting, according to this Letter of Intent,
12 is located in Illinois, correct?

13 A. Correct.

14 Q. And how did it come to be that you
15 began a relationship or were put in touch with
16 Evenson Peterson Consulting?

17 A. She used to be, work with Restonic
18 as an industrial engineer, and then she was an
19 interim president for Restonic.

20 Q. Now did you approach Miss Evenson
21 about hiring her as a consultant?

22 A. It was through the software people
23 that we, that we use and, and she does some
24 work for them and, you know, through those
25 people. And that was in, I believe I talked to

1 that may provide checks to Stevens Mattress
2 Manufacturing?

3 A. Probably just our local bank.

4 Q. Do you recall how long Upper Midwest
5 Sleep has been receiving checks from SFG?

6 A. I, I do not know.

7 Q. I'm going to ask you now, please, to
8 turn to what plaintiffs have marked as Exhibit
9 G, and those are documents Bates stamp numbers
10 SMND 0068 through SMND 0071.

11 A. Okay. I have those.

12 Q. And there's an invoice from A. Lava
13 & Son Company, located at 4800 South Kilbourn
14 Avenue in Chicago, Illinois, and it's sent to,
15 it indicates sold to Upper Midwest Sleep
16 Alliance -- I'm sorry, Upper Midwest Sleep,
17 LLC, Restonic, and shipped to Restonic. Is
18 that correct?

19 A. Yeah.

20 Q. What services does -- strike that.
21 Is it your understanding, Mr.

22 Stevens, A. Lava & Son Company --

23 A. Could you repeat that? You were
24 cutting out.

25 Q. Sorry.

1 Is it your understanding, Mr.
2 Stevens, that A. Lava & Son Company is located
3 in Chicago, Illinois?

4 A. Yes.

5 Q. Okay. And what services does A.
6 Lava & Son Company provide to Upper Midwest
7 Sleep, LLC and/or Restonic, located in Grand
8 Forks, North Dakota?

9 A. They supply us with, you know, with
10 foam, some types of foam, you know, time to
11 time we buy thread from them.

12 Q. What was the last thing, from time
13 to time you buy what from them?

14 A. Thread.

15 Q. Thread, okay.

16 A. You know, different components.
17 They specialize in certain types of components
18 that are, you know, like not easy for us to
19 get, but they have them and, you know, that's
20 why we buy from them from time -- you know,
21 different items.

22 Q. Do you recall how long you've been
23 buying from A. Lava & Son Company?

24 A. Oh, I'm sure that our -- you know,
25 all of my life. You know, you know, as far as,

1 that, for whatever reason, it didn't get a
2 Bates stamp number on.

3 MR. GAUSTAD: Yeah. And mine
4 doesn't really have a Bates number either.

5 MS. BERNHEIM: Well, we don't really
6 need that specific page anyway, so . . .

7 Q. (By Ms. Bernheim) And for the
8 record, Mr. Stevens, again, please correct me
9 if I'm wrong or if you're looking at something
10 different, I'm looking at what appears to be an
11 invoice from B & C International located at
12 6624 Weather Hill Drive, Willowbrook, Illinois,
13 60527, and this is directed to customer Stevens
14 Mattress Manufacturing, Inc. Is that correct?

15 A. Yeah.

16 Q. Okay. So is it your understanding,
17 Mr. Stevens, that B & C International is in
18 fact located in Willowbrook, Illinois?

19 A. Yes.

20 Q. Okay. And what services does, or
21 did B & C International provide to Stevens
22 Mattress Manufacturing?

23 A. What Ben does is that he is, he
24 lines up product in China that we import.

25 Q. Okay. So we meaning Stevens

1 Mattress Manufacturing imports product from
2 China?

3 A. Right.

4 Q. And B & C International is, for all
5 intents and purposes, like the identifier, the
6 bill man type --

7 A. Could you repeat that again, please?

8 Q. Okay. Is, is -- I'm trying to
9 understand exactly what B & C International's
10 purpose is.

11 Do they act as your agent, as
12 Stevens Mattress Manufacturing's agent in
13 China?

14 A. No. He's an independent and we buy
15 it from him.

16 Q. Okay. So he locates products in
17 China and you buy through, and Stevens buys
18 through him?

19 A. Right.

20 Q. And how long has B & C International
21 been providing Stevens with product from China?

22 A. Probably, I'm just trying to think
23 here, probably two years.

24 Q. Two years.

25 And has B & C, in that two-year

1 A. No.

2 Q. Have you ever conducted any
3 flammability testing or participated in any
4 flammability testing on behalf of Restonic?

5 A. Yes.

6 Q. When was that?

7 A. Prob -- you know, probably some --
8 you know, I don't remember the dates offhand,
9 but it was, let's see, 2005 or something like
10 that.

11 It might have even --

12 Q. How -- I'm sorry.

13 A. It might have, even have started in
14 2004, because the government started it and
15 then they held -- then they put a moratorium on
16 it for a year or so, and so, you know, I
17 forget, I kind of forget the chain of events
18 there.

19 Q. Now how did it come to be, to the
20 best of your recollection, that you
21 participated in the flammability testing on
22 behalf of Restonic?

23 A. Because I was on the, the, the
24 committee to research the different
25 flammability products.

1 Q. Does that committee have a name?

2 A. Probably the product development --
3 not the product development committee, probably
4 the -- maybe it was the product development
5 committee, I guess that would probably be the
6 -- and our sole purpose at that time was just,
7 basically, to get through the flammability
8 program.

9 Q. Do you recall your, your, your dates
10 of service on that committee?

11 A. I'm still involved on that
12 committee. And I probably started -- I, I
13 don't recall when I started, to be honest with
14 you.

15 Q. You're still on the committee you
16 said? I'm sorry.

17 A. Yes.

18 Q. Okay. And, and I don't, you know, I
19 don't want to get -- I don't want to go to an
20 area that I've asked and answered yet, but can
21 you tell me the last time, to the best of your
22 recollection, that that product development
23 committee met?

24 A. You mean in person?

25 Q. I suppose.

NOTARY-REPORTER'S CERTIFICATE

STATE OF NORTH DAKOTA)
) ss
COUNTY OF GRAND FORKS)

I, RUTH ANN JOHNSON, a Notary Public
within and for the County of Grand Forks and
State of North Dakota, do hereby certify:

That prior to being examined the
afore-named witness was by me sworn to testify
the truth, the whole truth, and nothing but the
truth;

That said telephonic deposition,
consisting of 89 pages of typewritten
materials, was taken down by me in Stenotype at
the time and place therein named, and was
thereafter reduced to typewriting under my
direction.

I further certify that I am neither
related to any of the parties or counsel nor
interested in this matter directly or indirectly.

WITNESS my hand and seal this 10th day of June, 2008



Ruth Ann Johnson
Notary Public
Grand Forks County, North Dakota

My Commission expires October 5, 2008.